IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re SCOTT WADE APPLEGATE Debtor.	No. 04-20862 Chapter 7
SHERWOOD METAL PRODUCTS, INC., Plaintiff, vs. SCOTT WADE APPLEGATE, Defendant.	Adv. Pro. No. 04-2036

M E M O R A N D U M

APPEARANCES:

ARTHUR M. FOWLER, ESQ.
Fowler & Fowler, PLLC
130 East Market Street
Johnson City, Tennessee 37604
Attorney for Sherwood Metal Products, Inc.

F. SCOTT MILLIGAN, ESQ.
Little & Milligan, PLLC
Suite 130, 900 E. Hill Avenue
Knoxville, Tennessee 37915
Attorney for Scott Wade Applegate

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

In this adversary proceeding, the plaintiff seeks a determination that its state court judgment against the debtor is nondischargeable under 11 U.S.C. § 523 (a) (2) and (4) and denial of the debtor's discharge pursuant to 11 U.S.C. § 727 (a) (3) and (5). Presently pending before the court is the debtor's motion to dismiss the nondischargeability claims, or in the alternative, for judgment on the pleadings, which has prompted an amendment request from the plaintiff to add an additional ground of nondischargeability under § 523 (a) (6). For the reasons given below, the debtor's motion to dismiss the § 523 (a) (2) and (4) counts of the complaint will be granted and the plaintiff's amendment request will be denied, as all, including the proposed § 523 (a) (6) count, fail to state a claim for relief. This is a core proceeding. *See* 28 U.S.C. § 157 (b) (2) (I).

I.

On March 9, 2004, the debtor Scott Wade Applegate filed for relief under chapter 7 of the Bankruptcy Code. Thereafter on June 14, 2004, Sherwood Metal Products, Inc. initiated this adversary proceeding, alleging that on September 9, 2002, it obtained a judgment in the amount of $1,668,246.29 against the debtor in the Chancery Court for Greene County, Tennessee. The plaintiff further alleges in its complaint that in that state court action, the chancellor issued on November 26, 2002, a temporary restraining order prohibiting the debtor from "cashing, negotiating, spending or diverting funds paid to [the debtor] from the Internal Revenue Service pending further order of the Court," and that subsequently on December 23, 2002, an agreed temporary injunction was issued, enjoining the debtor from "cashing, negotiating, spending or diverting funds paid to [him] from the Internal Revenue Service or any third party" and ordering such funds paid into the registry of the court to satisfy the plaintiff's judgment.

According to the plaintiff, the debtor "willfully and intentionally" violated these state court orders when he "cashed, negotiated, spent and diverted" more than $900,000 in tax refunds received by him from the Internal Revenue Service. The plaintiff contends that the debtor has "repeatedly failed and refused to account for said monies from the Internal Revenue Service, has failed to provide records regarding said funds, and has committed perjury by giving different false stories regarding the disposition of said monies." The plaintiff concludes that the debtor's "willful and intentional violation of the Temporary Restraining Order and Temporary Injunction entered in the above-referenced State Court cause, along with false representations and perjury under oath, excepts Defendant's debt to Plaintiff from discharge," and that "the conduct of the Defendant comes within 11 U.S.C. § 523 (a) (2) and (4) such that the indebtedness owed by the Defendant to Sherwood Metal Products, Inc. should be held to be non-dischargeable."

In his answer to the complaint, the debtor admits the existence of the $1,668,246.29 judgment and states that he is "generally familiar" with the allegations concerning the temporary restraining order and temporary injunction. However, as to the plaintiff's allegations regarding the tax refunds, the debtor explains that these tax refunds were received prior to entry of the plaintiff's judgment and the state court orders. More specifically, the debtor states that he received a tax refund in the amount of $410,668 on March 21, 2002, and that he and his former wife Toni Applegate received a tax refund in the approximate amount of $720,000 in July 2002. Regarding the initial refund, the debtor states that $360,000 of the funds were pledged as security and deposited upon receipt into an account for the benefit of Ted Markham and/or T.J. Box Construction, Inc. in repayment of prior obligations pursuant to contractual agreements. As to the refund payable to him and his former wife, the debtor states that these funds were delivered to his former wife "pursuant to terms of a Prior Marital Dissolution Agreement" and that "[a] portion or all said

funds were pledged to National Bank of Tennessee or its predecessor in March 2002." The debtor denies that he willfully and intentionally violated the state court orders by cashing, negotiating, spending, and diverting the IRS funds and denies that he refused to account for the IRS refunds and provide records or that he committed perjury.

In his motion to partially dismiss or for judgment on the pleadings filed October 14, 2004, the debtor asserts that the plaintiff's complaint fails to set forth any facts warranting a determination of nondischargeability. As such, he requests that the nondischargeability counts of the complaint be dismissed pursuant to Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12 (b) (6) for failure to state a claim upon which relief can be granted. Alternatively, the debtor seeks judgment in his favor on these issues. The plaintiff filed on November 8, 2004, a response to the motion, in which it denies the debtor's charge that the complaint fails to set forth a claim of nondischargeability. Alternatively, the plaintiff requests that it be permitted to amend the complaint to allege that the debt owed it by the debtor is nondischargeable under § 523 (a) (6). The debtor has filed a response in opposition to the amendment request. Each of these issues will be addressed in turn.

II.

When considering a Fed. R. Civ. P. 12 (b) (6) motion to dismiss for failure to state a claim upon which relief can be granted, as incorporated by Fed. R. Bankr. P. 7012 (b), the court must construe the complaint in the light most favorable to the plaintiff, accept as true the factual allegations in the complaint, and determine whether the plaintiff undoubtedly could prove no set of facts in support of its claims that would entitle it to relief. *See Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1240

(6th Cir. 1993). A complaint need only give fair notice of what the plaintiff's complaint is and the grounds upon which it rests. *Id.* Although this standard is extremely liberal, the plaintiff may not simply assert legal conclusions. *Id.* Rather, the complaint must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory. *Id.* Generally, if matters outside the pleadings are presented in a Rule 12 (b) (6) motion to dismiss, the motion is treated as one for summary judgment under Fed. R. Civ. P. 56. *See Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir. 1999), *overruled on other grounds by Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002).

III.

Section 523 (a) (2) (A)[1] of the Bankruptcy Code provides in pertinent part:

> A discharge under section 727 ... of this title does not discharge an individual debtor from any debt–
>
> ....
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by–
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition[.]

11 U.S.C. § 523 (a) (2) (A). The Sixth Circuit Court of Appeals has determined that a creditor must prove the following four elements in order to except a debt from discharge under this provision:

[1] The plaintiff does not state in the complaint which subpart of § 523 (a) (2) it is proceeding under, but the plaintiff's response to the debtor's pending motion addresses only subpart (A). Because there are no allegations in the plaintiff's complaint or response relating to subparts (B) or (C), the court will treat the action as one pursuant to § 523 (a) (2) (A) and will limit the analysis accordingly.

(1) the debtor obtained money through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth;
(2) the debtor intended to deceive the creditor;
(3) the creditor justifiably relied on the false representation; and
(4) its reliance was the proximate cause of loss.

Rembert v. AT&T Universal Card Services, Inc. (In re Rembert), 141 F.3d 277, 280-81 (6th Cir. 1998).

In his motion to dismiss, the debtor asserts that the complaint fails to set forth any factual allegations as to the various required elements of § 523 (a) (2) (A). The debtor notes that the complaint only cites the existence of the judgment and certain alleged post-judgment conduct of the debtor, but fails to allege any "facts or allegations surrounding the circumstances or facts leading up to incurring the debt, consummation of any loan, extension of credit, or any renewals thereof." According to the debtor, absent evidence or even an allegation that the defendant's judgment debt to the plaintiff was obtained by fraud, a claim of nondischargeability under § 523 (a) (2) (A) has not been presented. In response, the plaintiff asserts that the tax refunds constructively became its property when the state court ordered them to be paid into the state court registry and that therefore, the debtor committed fraud, actionable under § 523 (a) (2) (A), when he retained the tax refunds in violation of the state court orders.

The debtor's motion correctly sets forth the law in this area. The plain language of § 523 (a) (2) (A) requires that the *debt be obtained by* "false pretenses, a false representation, or actual fraud," and as the Sixth Circuit concluded in *Rembert*, one of the required elements for nondischargeability under § 523 (a) (2) (A) is that "the debtor *obtained* money through a material misrepresentation...." *Id.* at 280 (emphasis supplied). The complaint filed by the plaintiff makes no allegation whatsoever regarding false pretenses, a false representation, or actual fraud in connection with the judgment debt's origination.

Instead, the plaintiff contends that the debtor "willfully and intentionally" interfered with the plaintiff's attempts to execute its judgment against the debtor. These assertions, even if assumed to be true as required by Fed. R. Civ. P. 12 (b) (6), do not support a claim under § 523 (a) (2) (A). *See First Nat'l Bank in Blytheville v. Henson (In re Henson)*, 135 B.R. 346, 348 (Bankr. E.D. Ark. 1991)("Section 523(a)(2) contemplates fraud at the time the credit is obtained."); *Nat'l City Bank, Marion, v. Imbody (In re Imbody*), 104 B.R. 830, 839 (Bankr. N.D. Ohio 1989)("[T]he key word in § 523 (a)(2) appears to be 'obtained;'" no cause of action because plaintiff failed to show that debtors had received loan as a result of deceitful or fraudulent action); *Collier on Bankruptcy* ¶ 523.08 [1] [a] (15th ed. rev. 2004)("For a debt to fall within [§ 523 (a) (2) (A)], money, property or services, or an extension, renewal or refinancing of credit must actually have been obtained by the false pretenses or representations or by means of actual fraud."). Accordingly, the motion to dismiss with respect to the § 523 (a) (2) (A) nondischargeability claim will be granted.

IV.

The court turns next to the plaintiff's dischargeability claim under § 523 (a) (4) of the Bankruptcy Code which excepts a debt from discharge "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." The first exception dealing with fraud or defalcation by a fiduciary has been narrowly construed by the Sixth Circuit Court of Appeals to require that the debtor hold funds in trust for a third party pursuant to an "express or technical trust relationship." *R.E. Am., Inc. v. Garver (In re Garver)*, 116 F.3d 176, 179 (6th Cir. 1997). Tennessee courts recognize express trusts as "those created by the direct or positive acts of the parties, by some writing, deed, or will; or by the action of a court in the

exercise of its authority to appoint executors and administrators." *Lafferty v. Turley*, 35 Tenn. (3 Sneed) 157, 1855 WL 2436, *7 (1855)(citations omitted). *See also Jackson v. Dobbs*, 290 S.W. 402, 404 (Tenn. 1926)(recognizing *Lafferty* definition of express trust). A technical trust, under Tennessee law, is defined as "[a]n obligation arising out of a confidence reposed in a person to whom the legal title of property is conveyed, that he will faithfully apply the property according to the wishes of the creator of the trust." *Id.* at 405. *See also Houghton v. Lusk (In re Lusk)*, 308 B.R. 304, 310 (Bankr. E.D. Tenn. 2004)(applying *Lafferty* and *Jackson* definitions of express trust and technical trust to claim under § 523 (a) (4)).

In his motion to dismiss, the debtor asserts that the complaint filed by the plaintiff fails to state a claim for fraud or defalcation by a fiduciary under § 523 (a) (4) because there is no allegation of, or facts supporting a finding of, an express or technical trust between the parties. According to the debtor, no express or technical trust existed and "the relationship between the parties was that of debtor and creditor," rather than a fiduciary one. The plaintiff's only response to this assertion is that "the conduct of the Debtor [in retaining the tax refunds in contravention of court orders] rises to the level of fiduciary debts," although it admits that it "can find no case law to support this theory."

Again, the court must agree with the debtor in this regard. The complaint fails to set forth any facts evidencing the existence of either an express or technical trust: no writing is alleged embodying the parties' intent to create an express trust and there was no transfer of funds to the debtor in a trustee capacity which is required to create a technical trust. In arguing that the tax refunds constructively became its property, the plaintiff appears to be asserting a type of constructive trust, sometimes imposed by a state court when fraud has been established. *See, e.g., Intersparex Leddin KG v. Al-Haddad*, 852 S.W.2d 245, 249

(Tenn. Ct. App.1992)("A constructive trust may only be imposed against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment or questionable means, has obtained an interest in property which he ought not in equity or in good conscience retain."). However, the Sixth Circuit has repeatedly held that a constructive trust, one implied by law, is insufficient to create a fiduciary relationship for dischargeability purposes under § 523 (a) (4). *See Capitol Indemnity Corp. v. Interstate Agency, Inc. (In re Interstate Agency, Inc.)*, 760 F.2d 121, 124 (6th Cir.1985); *Carlisle Cashway, Inc. v. Johnson (In re Johnson)*, 691 F.2d 249, 251 (6th Cir.1982). *See also Graffice v. Grim (In re Grim)*, 293 B.R. 156, 166 (Bankr. N.D. Ohio 2003). Because the existence of an express or technical trust is not alleged in the complaint, the plaintiff fails to state a claim for fraud or defalcation while acting in a fiduciary capacity.

Similarly, the complaint fails to allege facts supporting nondischargeability for embezzlement under § 523 (a) (4).

> Federal law defines "embezzlement" under section 523(a)(4) as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Gribble v. Carlton (In re Carlton)*, 26 B.R. 202, 205 (Bankr. M.D. Tenn.1982) (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S.Ct. 294, 295, 40 L.Ed. 422 (1895)). A creditor proves embezzlement by showing that he entrusted his property to the debtor, the debtor appropriated the property for a use other than that for which it was entrusted, and the circumstances indicate fraud. *Ball v. McDowell (In re McDowell)*, 162 B.R. 136, 140 (Bankr. N.D. Ohio 1993).

Brady v. McAllister (In re Brady), 101 F.3d 1165, 1172-73 (6th Cir. 1996). There is no allegation in the complaint with respect to the first component of embezzlement, that the plaintiff entrusted its property to the debtor. To the contrary, the allegation in the complaint is that the debtor failed to turnover *his* property, his tax refunds, to the plaintiff. *See Webber v. Giarratano (In re Giarratano)*, 299 B.R. 328,

338 (Bankr. D. Del. 2003)(concluding the debtor did not embezzle funds pursuant to § 523 (a) (4) because the plaintiff did not entrust the debtor with the funds); *Hamdorf v. Gritton (In re Gritton)*, No. 02-9152, 2003 WL 1395566, *4 (Bankr. N.D. Iowa March 13, 2003)(finding no embezzlement where the debtor's original possession of the property was lawful and no entrustment occurred). Even though the plaintiff contends that the tax refunds constructively became its property, this conduct took place after the debtor incurred its debt to the plaintiff. The debt did not arise as a result of an embezzlement. Consequently, the complaint fails to set forth a claim of nondischargeability under § 523 (a) (4) based on embezzlement.

The complaint also fails to state a claim for larceny. Larceny is defined for § 523 (a) (4) purposes as "the fraudulent and wrongful taking and carrying away of the property of another with the intent to covert [sic] such property to the taker's use without the consent of the owner." *Sullivan v. Clayton (In re Clayton)*, 198 B.R. 878, 884 (Bankr. E.D. Pa. 1996). Larceny differs from embezzlement in that with respect to the latter, the original taking of the property was lawful or with the consent of the owner while larceny requires that the initial appropriation of the property of another be wrongful. *Id*. Nonetheless, both require the taking of property of another, a factual circumstance which is absent in the present case. And, as with respect to the embezzlement count, even if the constructive ownership theory posited by the plaintiff is accepted, the debt in question arose before, rather than as a result of, the debtor's alleged larceny. While the debtor's alleged wrongful retention of the tax refunds may have frustrated the plaintiff's collection efforts, it did not cause the debt in the first instance. Accordingly, based on the foregoing, the debtor's motion to dismiss plaintiff's nondischargeability claim under § 523 (a) (4) will be granted.

V.

In its response to the debtor's motion to dismiss, the plaintiff requests permission "to amend its complaint to allege a violation of Section 523 (a) (6) pursuant to *Heyne v. Heyne (In re Heyne)*, 277 B.R. 364 (N.D. Ohio 2002)."[2] The plaintiff contends that it possessed a legal interest in the IRS refunds based on recordation of its judgment against the debtor and the state court orders and that the debtor "deliberately and intentionally" converted the plaintiff's interest, rendering the debt nondischargeable under § 523 (a) (6). To support this contention, the plaintiff has attached as Exhibit 1 to its response, a receipt from the Greene County, Tennessee Register evidencing the registration on September 9, 2002, of the plaintiff's judgment against the debtor.

In response to the plaintiff's amendment request, the debtor argues that the § 523 (a) (6) claim is untimely pursuant to § 523 (c) (1) and Fed. R. Bankr. P. 4007, because it was filed after the deadline and Fed. R. Civ. P. 15, incorporated by Fed. R. Bankr. P. 7015, would not allow relation back of the claim. Regarding the merits of the amendment, the debtor denies that the recordation of the judgment or the court orders created a lien or any other interest in favor of the plaintiff in the debtor's tax refunds or other

[2] The court notes that the plaintiff's request for leave to amend the complaint was set forth in its response to the debtor's motion to dismiss rather than in a separate motion. The Sixth Circuit Court of Appeals has expressed "disfavor of such a bare request in lieu of a properly filed motion for leave to amend," *PR Diamonds, Inc. v. Chandler,* 364 F.3d 671, 699 (6th Cir. 2004); and cited favorably the D.C. Circuit's conclusion that "a bare request in an opposition to a motion to dismiss–without any indication of the particular grounds on which amendment is sought, *cf*. Federal Rule of Civil Procedure 7(b)–does not constitute a motion within the contemplation of Rule 15(a)." *Confederate Mem'l Ass'n v. Hines,* 995 F.2d 295, 299 (D.C. Cir.1993), *quoted in D.E. & J. Ltd. P'ship v. Conaway,* 284 F.Supp.2d 719, 751 (E.D. Mich. 2003). Additionally, the plaintiff has failed to comply with *E.D. Tenn. LBR* 7015-1, which provides "[a] party who moves to amend a pleading in a proceeding shall attach a copy of the proposed amended pleading as an exhibit to the motion."

personal property of the debtor, absent execution and attachment pursuant to Tennessee statutory law. The debtor also argues that the state court orders granting injunctive relief were moot upon entry because the debtor had already disposed of or transferred the tax refunds to other creditors at the time the orders issued. Finally, the debtor asserts that the plaintiff's allegations do not establish a claim for conversion under § 523 (a) (6) because the tax refunds were property of the debtor rather than of the plaintiff.

Assuming for the moment that the debtor's request to amend is timely, the court will proceed directly to the heart of the issue, whether the amended allegations set forth a claim for nondischargeability under § 523 (a) (6), which excepts from discharge a debt arising out of "willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523 (a) (6). According to the plaintiff:

> Plaintiff ... had a legal interest in the IRS monies pursuant to its Judgment Lien, and the Court's order to pay said monies into the Chancery Court, and by the Defendant being in direct violation of the Chancery Court's Order, the Defendant committed the tort of conversion for purposes of Tennessee law.
> ....
>
> If the tort of conversion is done deliberately and intentionally, such act will give rise to a non-dischargeable debt.

In order for a conversion to render a debt nondischargeable under § 523 (a) (6), the debtor must have intended the injury, satisfying the "willful" element, must have known the wrongfulness of his actions, satisfying the "malicious" element, and the "willful and malicious injury" must have given rise to the debt. *See Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 463-64 (6th Cir. 1999); *ABF, Inc. v. Russell (In re Russell)*, 262 B.R. 449, 455 (Bankr. N.D. Ind. 2001). Under Tennessee law, conversion is "the appropriation of the thing to the party's own use and benefit, by the exercise of dominion over it, in

defiance of Plaintiff's right." *Gen. Elec. Credit Corp. of Tenn. v. Kelly & Dearing Aviation*, 765 S.W.2d 750, 753 (Tenn. Ct. App.1988)(quoting *Barger v. Webb*, 391 S.W.2d 664, 665 (Tenn.1965)). As explained by the Tennessee Court of Appeals:

> The main focus of the tort is the interference with an owner's property right. The degree of this interference, as well as the impact on the property, determines whether there has been a conversion ....
>
> [T]he defendant must intend to convert the property. This intention does not necessarily have to be a matter of conscious wrongdoing, but can merely be an exercise of dominion or control over the property in such a way that would be inconsistent with the owner's rights and which results in injury to him.

Id. Thus, in order for the tort of conversion to have taken place, the debtor must have interfered with the plaintiff's property or its legal interest in property.

The plaintiff asserts that its registration of its judgment against the debtor and the order of the state court directing the debtor to pay the tax refunds into the state court registry gave the plaintiff an ownership or some type of legal interest in the tax refunds. However, the plaintiff cites no authority for this proposition. While registration of the judgment with a county register created a judgment lien on the debtor's real property, *see Tenn. Code Ann.* § 25-5-101 (b); *Keep Fresh Filters, Inc. v. Reguli*, 888 S.W.2d 437, 443 (Tenn. Ct. App. 1994); it did not create a lien on the debtor's personal property, including the tax refunds at issue in the present adversary. *See In re Northern*, 294 B.R. 821, 828 (Bankr. E.D. Tenn. 2003). In order to obtain a lien on the debtor's personalty, the plaintiff was required to timely obtain the issuance and levy of a writ of execution. *See Tenn. Code Ann.* § 25-5-103; *Keep Fresh Filters, Inc.*, 888 S.W.2d at 443. There is no allegation in the plaintiff's amendment request that it obtained an execution lien on the debtor's tax refunds. And, this court can find no authority for the

contention that mere entry of the state court orders created a legal interest in the refunds in favor of the plaintiff, notwithstanding the state court's directive that the debtor pay such monies into court. Absent such an interest, no claim for conversion has been stated.[3] *See Steier v. Best (In re Best),* 109 Fed. Appx. 1, *8, 2004 WL 1544066, **7 (6th Cir. 2004)(unpublished op.)("[A]n 'injury' under section 523(a)(6) must constitute an invasion of the creditor's legal rights.")

Nor does the complaint otherwise set forth a basis for relief under § 523 (a) (6). Actions to "thwart collection" occurring after a judgment debt cannot be the cause of the debt and, consequently, cannot render the judgment debt non-dischargeable under § 523 (a) (6). *Id.* 109 Fed. Appx. at *6, 2004 WL at **5. The court having found that the plaintiff fails to state a claim for relief under § 523 (a) (6), it is not necessary for the court to address the debtor's assertion that the plaintiff's amendment request is untimely.

VI.

In accordance with the foregoing, the court will enter an order contemporaneously with the filing of this memorandum opinion granting the debtor's motion to dismiss the nondischargeability claims of § 523 (a) (2) and (4). The court will also deny the plaintiff's request to amend the complaint to allege nondischargeability under § 523 (a) (6) because the allegations do not state a claim for relief under that

[3] In making its § 523 (a) (6) amendment request, the plaintiff asserts that it is relying on *Heyne v. Heyne (In re Heyne),* 277 B.R. 364 (N.D. Ohio 2002). However, *Heyne* provides little guidance other than a demonstration of the general proposition that a conversion may be the basis of a nondischargeability claim under § 523 (a) (6). The debt held non-dischargeable under § 523 (a) (6) in *Heyne* was a divorce decree award based on the debtor's conversion of the parties' marital property. *Heyne*, 277 B.R. at 368-69. Accordingly, the facts are inapposite to those in the instant case.

provision.

FILED: DECEMBER 3, 2004

BY THE COURT

/s/

_____
MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE